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Introduction

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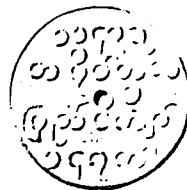
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Introduction

Hostilities with the British started from about 14 December 1852 and the Province of Pegu [Lower Burma] was ceded to the British Indian Empire on 22 December 1852. King Pagan abdicated in favour of King Mindon on 17 February 1853 and naturally the new king asked his ministers to consider seriously how to get back the lost territories without the risk of another such foreign invasion. The king said that he asked them repeatedly on this problem and there was no one who could give him a satisfactory reply. Finally he considered that the loss of territories was due to weaknesses in strategy and tactics on their part though he would never admit that it was the superiority of enemy strategy and tactics that defeated them and that would eventually bring about the downfall of Alaungmintaya dynasty.

With diplomacy all the king could do was to postpone the "Kala Calamity" for another two to three decades. Nevertheless he reached a solution with three important things, viz. to raise a more powerful fighting force (see ROB 6 April 1853), to seek an alliance both offensive and defensive with one or more European powers, and to use religious propaganda more effectively to keep the people contented and helpful. Unfortunately neither he nor his ministers knew how to organize a respectable army on modern standards. On diplomacy he would not find any European power that would take up Burma's interest against the British. And religious propaganda was no longer useful in modern warfare (see ROB 20 April 1853). For quick results the king tried minting coins and standardizing weight, capacity and length measures, especially for business transactions with the British subjects. In one Royal Order (ROB 29 January 1854) he said :

(1) With 'Lump Silver Currency' the percentage of impurity in silver rises or falls with the intention to cheat and this is unquestionably thieving for which sin one would be punished in hell; on the other hand foreigners who came to trade in our kingdom prefer using coined money; King Badon 1783-1819 issued silver and copper coins as currency;



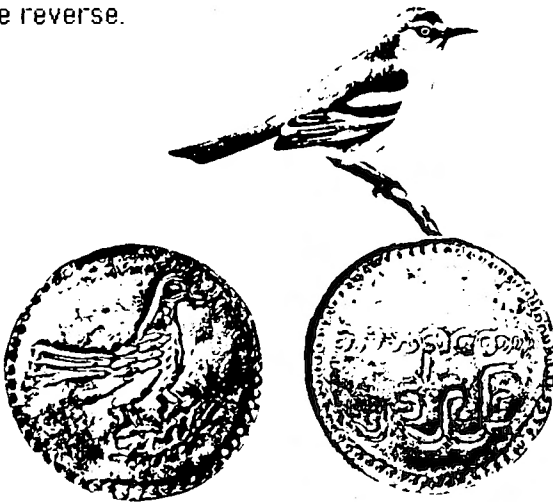
[S]1143 khu
Tapuiwtwai la
pran kuoau
14 rak
[11 February
1782]

Robinson & Shaw 1980 p. 72 Fig. 8.6 Copper



[S] 1146 khu
Amarapura
Chanphrumya.
Rhan Nuin Nam
[A.D. 1784]

Robinson & Shaw 1980 p. 62 Fig. 7.38 [Silver]
following that example coins would be issued now; put Anno Buddhae
2396 when the king ascended the throne (17 February 1853) on the
obverse and a figure of the bird called Shwe Pyi So [Common lora] on
the reverse.



Common lora
(immature male)
Aegithina tiphia
tiphia [Smythies
1953 Pl.III Fig.7
p.36 and pp.80-81]

Sasanatoau 2396
[A.D. 1853]
Robinson & Shaw
1980
p.80
Fig. 10.1

(M. Robinson and L. A. Shaw, *The Coins and Banknotes of Burma*,
Manchester, Lancashire and Cheshire Numismatic Society, 1980)

(2) Chain Ti Ta [Measures of weight, capacity and length] shall be
standardized; only the standard weights, etc. shall be used in [the
whole kingdom], send this Order to all [Provincial Chiefs].

To emphasize the fact that he had had the coinage for the foreign
merchants, he passed another Royal Order (ROB 29 January 1854) like
this :

Merchants from other countires frequently visited ours and it
would be of mutual benifit to have coined money; issue coins with the
Year of the Buddha's Religion [Anno Buddhae that was supposed to
begin in 544 BC] when the king ascended the throne [17 February
1853] on one face of the coin and the figure of a bird called Shwe Pyi
So [Common lora] on the reverse.

He even tried buying up the kind of commodities that the foreign traders
wanted and selling them to these traders only with some reasonable
profit in order to encourage foreign trade (ROB 16 June 1855, ROB 5

October 1858 and ROB 19 October 1858) and this eventually started the Royal Monopolies. As a matter of fact he did this to improve foreign relations because he wanted very much to avoid another war with the British and he believed at first that through diplomacy he might regain the lost territories. After meeting with the British envoys for a couple of times, he realized his mistake and he went back to the policy of leave them alone for some time. He also discovered that as the British insisted upon having what they called the extraterritorial rights, it was very important to make reforms in the legal system of his country (ROB 24 April 1853) though he took longer than what was necessary to carry them out. The reason for this delay was probably because no Burman really thought of making any amends in his time honoured customary law. He felt that what ambivalence that a Burman needed to do was done hundreds of years ago when he was converted from being an animist to a good Buddhist after they had settled in the central plains of Burma in about the middle of the ninth century A.D. As regards the king the delay was probably due to these two things. Firstly he believed that what he had done already would appease the British for some time and secondly that the British were busy in Europe (Crimean War) and India (Afgan War and the Indian Mutiny). The Burmese would be really safe for some time. The king turned his attention to religious reforms, etc. during the lull of events in Burma British relations for about a dozen of years.

The king's sense of security was shattered when Prince Myin Gun led a rebellion (2 September 1866). Without much difficulty they were suppressed but some escaped into British territories and he had had some good cause to fear that they might receive the British support against him. He started negotiating with the British to import steam engines to have factories producing various things from fabrics to fire arms (ROB 19 March 1869). He was then confronted with four serious problems which Burma until now could not solve satisfactorily. They were : Burma students did not have enough background education to receive training abroad. There was the almost unsurmountable language problem. Young men of comparatively less intelligence were sent abroad because they were sons and nephews of influential people. For various reasons including the language barrier and poor background knowledge their teachers were reluctant to teach them. Then even if they had learnt the art for which they were sent abroad, they would come back and remain idle simply because that state had forgotten more often than not the programme for which they were sent outside for new skills. But in one instance we find that an imported knowledge was put to good use. A telegraph line was laid from Mandalay to Myay De [Allan Myo called after

Major Allan] in 1869; according to a contemporary map (now in the Mandalay University Museum, the line ran along these places: Mandalay, Ava, Yadan, Tada U, Nwe Gyaw Dat, Thin Ban, Gaung Gwe, Min The, Pauk Hsein, Saga De, Awk Taw, Ta Nyaung Gyaung, Gwe Gon, Ya Ma Thit, Kon Ywa, Myo Tha, Kywe Sein, Na Det, Kan Hla, Thet Ke Gyin, Son Ywa, Thein Gon, Kyin Pya Tin, Koke, Na Bi Ywa, Myin Gyan, Myo Tha, Ta Naung Bin, Kon Tha, Kan Gyi, Su Bya Gon, Na Bu Daw, Myi Yan Gyi, Ga Daung Na Hto Gyi, Thet Ke Gyin, Gwe Gyan, Ma Hlaing, The Daw, Shan Ma Nge, I Nga, Kyet Pyet, Se Gyi, Sule Gon, Kyauk Ta Ga, Kyauk Wet, Shwe Ban Daw, Pin, Ywa Mon, Zalok Gyi, Le Aing, Nyaung Yaung, Nat Mauk, Na Gan Gyi, Myo Thit, Myo Lin, Taung Dwin Gyi, Nyaung Bin Hla, Kala Gan, Thein Gon, Ze Bin Waing, Pyin Gyaung, Pe Le and Ka Din Ma Tha [and Myay De].

The earliest known record on Burmese telegram is given below :

North Telegraph Office, Mandalay

Telegram from Min Gyi Maha Sithu [Kin Wun, Yin Wa, Taung Dwin Gyi] to [Hluttaw] received at 9.00 am on 20 November 1871

Send immediately an expert on calculating timber girth Stop Reply by wire when he would come Stop

Reply telegram from [Hluttaw] Mandalay North Telegraph Office to [Min Gyi Maha Sithu] Taung Dwin Gyi

Nga Tun Aung and Nga Sote, Kyun Daw Myo [Born Royal Slaves], experts on timber, went on the Dawk [Mail Boat] of Nga Ok, Asaung Mye [Bearer of King's Sword] Stop They left on 21 November 1871 Stop No one would be sent from here to handle money Stop You choose your own man to do it Stop

Nga Po Nyun, Daing Daw [Bye Daik Messenger] was sent with the reply to Nga Hson, Kyay Nan Saya [Telegraphist], North Telegraph Office, Mandalay on 21 November 1871.

As we all know, it was this timber trade that put an end to the Burmese monarchy. One of the last telegram sent was :

Telegraph from [Hluttaw] to Commanders at Ava, Sagaing and Tha Byay Dan sent at [06.00] hour on 27 November 1885.

Attention Stop Commanders of Forts Ava, Sagaing and Tha Byay Dan Stop Cease fighting and surrender Stop

An extension of the line from Mandalay to Bhamo was finished on 3 May 1872. It would go along the Kin [Guard Stations] which [by a record of 30 August 1866] were :

Mandalay, Madaya, Za Gyin, Ma Kway Taya, Pin Nan, Kon Aing, Chaung Gyi, Leit Kya, Main Ma That, Ohn Da Gu, Kyauk Gyi, Ohn Baing, Twin Nge, Kyauk Hpyu, We Baung, Za Ga Daung, Bon Ma, Za Loke Gyi, Yay Da Gun, Pa Than, Pa Thin, Kyain Daw, Za Ku, Tha Yet Chaung, Kyun Daw Gyi, Myit Son, Pin Lon,

Ba He, Ma Bain, Nan Bon Pon, Pin Kyain, Si Bain, Si U, Kha Gyin, Kon Hka, Ma Lin and Bhamo.

King Mindon turned his attention to legal reform by appointing an advisory council on law on 23 April 1866 (National Library, Rangoon, Kin / Parabike 206/3) with the following members :

Lord Pakhan, Minister

Lord Laung Shay, Minister

Lord Yenangyaung, Minister of Interior

Lord Khan Bat, Assistant Minister

Mone Bohmu [Commander of Mone Troops], Assistant Minister

Ko Khayaing Ok [Nine District Chief] , Shay Win Hmu [Commander of East Palace Guards]

Kin Wun [Officer of Guard Stations], Myin Zu Gyi Wun [Officer of Burmese Horses]

Myo Wun [Town Officer], Thit Taw Wun [Officer of Forest]

They were to meet regularly in Sanu - passage, leading to Glass Palace.

Occasionally Crown Prince and Lord Mya Daung, Minister, shall attend their meetings. (See also Yi Yi, "A Note on King Mindon's Administration", *BEHC*, I, ii, December 1960, pp. 103-115)

On the recommendation of this council, the king was going to pass either new laws or to amend the old laws in the administration. To try cases with the application of new laws he appointed thirty six itinerant judges (ROB 26 April 1866). What the king expected a judge to do was mentioned in Nay Myo Min Hla Kyaw Htin's appointment as judge (see ROB 28 December 1867). A few important laws made by the Council are given here :

The Mong Nai Garrisons Act 1867 (30 June 1867)

The Sassamedha Tax Act 1868 (30 April 1868)

Hmat Sa [Note], [Explanation] of the Sassamedha Tax Act 1868 (22 May 1868)

The Sassamedha Act Section 8 Subsection 2 On Theft and Robbery (10 February 1869)

More Explanations on the Sassamedha Act (10 February 1869)

The Bribery Act (10 February 1869)

The Extortions Act (10 February 1869)

Officer of Places down the River Act (26 December 1870)

Remarks on the Sassamedha Act (28 February 1871)

The Sassamedha Act 31 (19 April 1871)

The Newspaper Press Act 15 August 1873

The Supplementary Support of Armed Men Act 5 June 1875

King Thibaw carried on with the legal reform started by King Mindon, his

father. Subsequently there would be some relevant changes in the administrative system. The fourteen departments in administration was introduced on 11 November 1878. A record of 14 December 1878 mentions that the king had appointed the First Council and the Second Council of U Ba Day Byu [Law Makers]. On 12 August 1880, he had had clearly defined the three groups of administrative organs, viz. U Ba Day Byu [Legislative], U Pa Day Zaunt [Judiciary] and U Ba Day Khan [Executive] Departments were formed. Also on 12 August 1889, the eight executive departments were formed. The kingdom was divided into ten districts on 29 February 1884. The new penal code was introduced soon after this. There are hand written as well as printed copies of them but none of them are complete now so that we cannot give the date when they were promulgated but we can safely assume that they were made soon after the appearance of nine administrative departments on 12 August 1880 (see Ohn Kyi, "Civil and Criminal Codes of King Thibaw", *University Research Journal*, 11, i, 1980, pp. 151-171).

In the administration of law, the Burmese kings and their judges used the works on customary law called Dhammasattha [Dhammathat] and rulings called Rajasattha [Yazathat]. Now King Thibaw introduced a new criminal code (National Library, Rangoon, Tin / Parabike 397). It has twenty chapters and the list below will show that they are almost the same with *The Indian Penal Code*, used in British Burma since 1861.

- Chapter 1 [Introductory] Five Laws [/FC 1]
- Chapter 2 Definition of Seventeen Punishments [/FC 3]
- Chapter 3 Definition of Sixteen Commutable Punishments [/FC 3]
- Chapter 4 On Conspiracy and Twenty Six Punishments [/FC 6]
- Chapter 5 On Twenty Two Disturbances of Peace leading to Riots [/FC 8]
- Chapter 6 Seventy Seven Crimes on Theft, Robbery, Blackmail, Fraud,
Hoarding Unlawfully Acquired Property, Cheat, etc. [/FC 17]
- Chapter 7 Seventy Eight Punishments of Manslaughter, Assault, Unlawful
Capture of Men, Manhandle, Bully, Kidnap, Rape, etc. [/FC 16]
- Chapter 8 Seven Punishments of Blackmail [/FC 22]
- Chapter 9 Fourteen Punishments of Fraudulent Changes in a Document
[/FC 18]
- Chapter 10 Perjury [/FC 11]*+
- Chapter 11 Twenty Four Punishments on Making and Using False Coins and
Seals [/FC 12]
- Chapter 12 Three Punishments on Use of False Weight, Capacity and
Length Measures [/FC 13]
- Chapter 13 Nineteen Punishments on Manufacture of Poison, Fireworks [or
Anything that would cause a Fire] and Medicine [not good as it

claims] [/FC 14]

Chapter 14 Seventeen Punishments on Manufacturing and Consuming
Intoxicants*+

Chapter 15 Six Punishments of Gambling*+

Chapter 16 Nine Punishments on Slaughter of Cattle for Meat *+

Chapter 17 Sixteen Punishments on Misappropriation of Royal Funds,
Mismanagement of Royal Lands, Taking Bribes and Extortions
[/FC 9]+*

Chapter 18 Seventeen Punishments on Negligence of Duty and
Disobedience of Order [/FC 10]+*

Chapter 19 Twelve Punishments on Abetment and Scheming to commit a
Crime [/FC 5]+*

Chapter 20 Fifteen Points on Condonation [/FC]+*

* National Library, Rangoon, Tin / Parabike 397

+ Available, the rest were lost

* Lhwe De Monastery, Budalin

This list shows that King Thibaw's Penal Code is the same with *The Indian Penal Code* [now called *The Yazathal Gyi*] minus chapters 2, 7, 15, 19, 20 and 21 though its chapters on intoxicants [14], gambling [15] and cattle slaughter [16] are new to *The Indian Penal Code*. Probably the lost chapters 1 to 9 and 11 to 13 (altogether twelve) would appear some day though we could assume with little fear for error that they would be the same with their corresponding parts in *The Indian Penal Code*.

It seems that National Burma's decision to adopt a new penal code used in British Burma since 1861 was made to improve relations with the British because the British tried to administer justice even at the risk at some points of ignoring the existing customs of the people over whom they ruled and a Burman could not possibly agree to everything in it. He would also feel that a few things important to him were missing in it. That explains why the clauses on intoxicants, gambling and cattle slaughter were added in King Thibaw's code. On the other hand although the people including the officers did not oppose the new code they just ignored it. We find no court decisions made according to the new code.

The Burmese would encourage to decide a case was by arbitration; the English recommended litigation. In another words the Burmese were happy to apply the maxim of *Kri: san caka: kui nay on nay san caka kui pa prak on* [Mitigate the Big Word and Forget the Small One] to decide a case. This maxim appears in the appointment order of an officer with the instruction that he shall use it without fear or favour to decide disputes among the people under his charge. With the British it is the evidence which is more important and nothing could be done without establishing

guilt by evidence. They would never allow a guilty person go free though the Burmese would let him go when he and his guarantors promised his good conduct in the future. The judge who let a guilty person go unpunished is by the British law criminally liable. By the Burmese law an accused would not be punished until he admitted his guilt and the third degree is allowed to get his confession. On the contrary, a judge under the British system would not convict a person without concrete evidence even if he pleaded guilty. The law is made in the name of king and any breach of law is a Yaza wut – Act against the king. A Burman would deny it by the simple fact that only an act to do bodily harm to the king is a Yaza Wut and an assault made between man against man is therefore obviously not a Yaza Wut – Act against the king. These are the few instances made to illustrate the difference in basic principles between *The Indian Penal Code* and the Burmese customary law. Nevertheless King Thibaw accepted the advice of his council to adopt it.

It would be of interest to know how people react to this change in the penal code. As mentioned above the Order to change came after the division of administration into nine departments on 12 August 1880. When the body of U Ba Day Byu [Law Makers] was formed there were provisions like :

- after the rules were drawn they shall be sent to respective offices or departments to discuss and improve upon them if necessary;
- discussions would be made in Hluttaw and difference of opinion would be decided by simple majority and when there was a tie the king's decision is final;

- after an act had been discussed and agreed upon the king proclaimed it as law;

- there would be occasional discussions later to make some necessary amendments;

- a judge or an executive officer would every now and then want to find out whether his interpretation on a certain point of the new law was correct or not; and it was the duty of the law makers to answer him.

How much of these provisions were put to good use is a question that no one could answer for lack of evidence. There were no discussions nor any questions because the change was made only on paper. That seems to be the only logical conclusion.